

declarations of Edwards to him, there can be no doubt that his proof, with reference to the fact of his pressing for the assignment is admissible; and if so, it brings the case clearly within the decision of the Court of Appeals in *Crawford & Sellman vs. Taylor*, and therefore it cannot be considered as an undue and improper preference within the meaning of the insolvent laws.

A good deal of ingenious argument has been employed on both sides, in order to fix the precise period at which the assignment was made; it being insisted on the one side, that it was subsequent to the 5th of April, 1845, when the first bill was filed, and was therefore made *post litem motam*; and on the other, that it was prior to that time, and consequently not subject to the considerations which might affect it, if made after that suit was instituted. Without undertaking to solve this knotty point, it may be sufficient to say, that the suit then commenced was dismissed by the plaintiffs themselves; and besides, there is no reason to believe that the party who made, and the party who took the assignment, knew at the time that there was an intention to litigate the questions, of the right of the assignor to make it. Though these parties lived in Alleghany county, and are so described in the bill, the subpœnas issued to the sheriff of Baltimore county, and of course was not served.

It has been said, and urged with much earnestness and force, that the apparent reluctance of Edwards to make the assignment was affected, and therefore, notwithstanding the forms of solicitation on the one side, and holding back on the other, which have been exhibited, the transaction was a voluntary one, and the transfer made with an intent to give an undue and improper preference over the rest of the creditors.

I cannot, however, view it in this light, being unable to see any motive for it, unless indeed, the parties were arranging a case which would be protected by the decision of the Court of Appeals in one of the cases referred to, such a supposition I think wholly unsupported by the evidence and the circumstances of the case.

My opinion therefore is, that upon the concession that these parties have a standing in court to impeach this assignment, as